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In re Application of
Zuo et al.
Application No. 09/940,180
Filed: August 27, 2001
Attorney Docket No. 27300/03

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OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the Petition to Correct Filing Date, filed April 9, 2002, requesting the above-identified application be accorded the filing date of August 27, 2001.

Application papers in the above-identified application were filed on August 27, 2001. On October 9, 2001, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application, indicating August 27, 2001, as the filing date, but requiring, inter alia, Figures 1A and 4C described in the specification. The Notice set a two-month period for reply, with extensions of time available under 37 CFR \$1.136(a).

Petitioner subsequently, on December 10, 2001, filed a response to the Notice, including an Amendment of the above-identified application.

In response, on December 28, 2001, the Office of Initial Patent Examination mailed Petitioner an Updated Filing Receipt for the above-identified application noting that the application was now complete; however, the filing date for the above application was changed to December 28, 2001¹.

Petitioner files the instant petition requesting correction of the application filing date to August 27, 2001.

The Manual of Patent Examining Procedure ("MPEP"), § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

The mailing of a 'Notice of Omitted Item(s)' will permit the applicant to either: (1) promptly establish prior receipt in the

¹ A copy of the Updated Filing Receipt was not included with the instant petition, nor was a copy found in the application file. However, the Patent Office Location and Monitoring System ("PALM") records reveal that the Updated Filing Receipt was mailed on December 28, 2001, and PALM records indicate the filing date accorded the instant application as being December 28, 2001.

USPTO of the drawing(s) at issue (generally by way of date-stamped postcard receipt (MPEP 503)) (by filing a petition under 37 CFR 1.53); (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date such submission as the application filing date (by filing a petition under 37 CFR 1.182); or (3) "accept the application as deposited in the USPTO [and not] respond to the 'Notice of Omitted Item(s)'" , thereby constructively accepting the application as deposited with this Office. Amendment of the specification is required . . . to cancel all references to the omitted drawing[s]. . . ." See MPEP 601.01(g).

In this instance, Petitioner elected option (3).

A review of the file reveals that the application as filed on August 27, 2001, was a complete application under 37 CFR 1.53(b) such that the application was correctly accorded the August 27, 2001 filing date.

Accordingly, the petition is GRANTED.

A refund of the petition fee has been scheduled.

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to August 27, 2001, with the drawings filed on that date, and for the mailing of a corrected filing receipt.

Thereafter, the file will be returned to Technology Center AU 1653 to await the filing of the Preliminary Amendment, and for examination in due course.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.

Christina Tartue Donnell for

Beverly M. Flanagan, Esq. Conferee: Christina Donnell, Esq.
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy